

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL PALM, et al,

Plaintiffs,

vs.

No. CIV-09-0397 MCA/LAM

**THE BOARD OF COUNTY COMMISSIONERS
OF BERNALILLO COUNTY,**

Defendant.

**ORDER GRANTING PLAINTIFFS' MOTION FOR PAYMENT OF PLAINTIFFS'
ATTORNEY HOURS RELATED TO THE MOTION FOR SANCTIONS (Doc. 132)**

THIS MATTER comes before the Court on Plaintiffs' *Motion for Payment of Plaintiffs' Attorney Hours Related to the Motion for Sanctions (Doc. 132)* (hereinafter "*Motion for Attorney's Fees*"), filed April 2, 2010. Plaintiffs filed this motion after the Court granted in part *Plaintiffs' Motion for Discovery Sanctions and Memorandum in Support (Doc. 116)*, and allowed Plaintiffs to submit documentation of Plaintiffs' counsel's attorney's fees and costs incurred in connection with that motion, and gave Defendant an opportunity to respond to the amount requested. *See Order Granting in Part and Denying in Part Without Prejudice Plaintiffs' Motion for Discovery Sanctions and Memorandum in Support (Doc. 116) (Doc. 131)* at 6. Defendant's response to the requested amount of attorney's fees and costs was due April 16, 2010, but none was filed. Pursuant to the Court's local rules, "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the

motion.” D. N.M. LR-Civ. 7.1(b). Having considered the motion, the record of this case, and relevant law, the Court **FINDS** that the motion should be **GRANTED in part**.

Pursuant to Fed. R. Civ. P. 37(b)(2), the Court granted Plaintiffs’ request for certain sanctions for Defendant’s failure to comply with the Court’s ***Order Granting Plaintiffs’ First Motion to Compel Discovery and Memorandum in Support (Doc. 98) (Doc. 109)***. See ***Order Granting in Part and Denying in Part Without Prejudice Plaintiffs’ Motion for Discovery Sanctions and Memorandum in Support (Doc. 116) (Doc. 131)*** at 5-6. Under Fed. R. Civ. P. 37(b)(2)(C), in addition to or instead of ordering sanctions for failure to comply with a Court order, the Court “must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Defendant has not provided any evidence that its failure to comply with the Court’s order granting Plaintiffs’ motion to compel was substantially justified, and there are no other circumstances making an award of Plaintiffs’ attorney’s fees and costs associated with their motion for sanctions unjust. The Court, therefore, will award Plaintiffs’ counsel reasonable attorney’s fees and costs associated with ***Plaintiffs’ Motion for Discovery Sanctions and Memorandum in Support (Doc. 116)***. The Court notes that “the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates,” and the Court “has discretion in determining the amount of a fee award.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1201 (10th Cir. 1986). The Court should exclude from the fee calculation “hours that were not reasonably expended.” *Hensley*, 461 U.S. at 434 (citation and quotation marks omitted). Plaintiffs’ counsel states that he “incurred 16.25 attorney hours in the course of activities related to the Motion for Sanctions, and seeks payment of \$3,512.03”

(16.25 hours at \$200 per hour, plus gross receipts tax at 8.0625%). *Motion for Attorney's Fees* (Doc. 132) at 2 and (Doc. 132-1) at 1. The Court finds that these hours are reasonable and approves payment of these fees.

IT IS THEREFORE ORDERED that Plaintiffs' *Motion for Payment of Plaintiffs' Attorney Hours Related to the Motion for Sanctions* (Doc. 132) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs are awarded \$3,250 for attorney's fees (\$200 x 16.25 hours), plus gross receipts tax of \$262.03, for a total of **\$3,512.03**.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE